

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JORDAN C. KIMBALL,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 2:25-cv-00363-DJC-CSK

FINDINGS AND RECOMMENDATIONS
(ECF Nos. 1, 2)

Plaintiff Jordan C. Kimball is representing himself in this action and seeks leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915.¹ (ECF No. 2.) For the reasons that follow, the Court recommends Plaintiff’s IFP application be denied, and the Complaint be dismissed without leave to amend.

I. MOTION TO PROCEED IN FORMA PAUPERIS

28 U.S.C. § 1915(a) provides that the court may authorize the commencement, prosecution or defense of any suit without prepayment of fees or security “by a person who submits an affidavit stating the person is “unable to pay such fees or give security therefor.” This affidavit is to include, among other things, a statement of all assets the person possesses. *Id.* The IFP statute does not itself define what constitutes insufficient

¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c).

1 assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). In *Escobedo*,
2 the Ninth Circuit stated that an affidavit in support of an IFP application is sufficient
3 where it alleges that the affiant cannot pay court costs and still afford the necessities of
4 life. *Id.* “One need not be absolutely destitute to obtain benefits of the in forma pauperis
5 statute.” *Id.* Nonetheless, a party seeking IFP status must allege poverty “with some
6 particularity, definiteness and certainty.” *Id.* According to the United States Department
7 of Health and Human Services, the current poverty guideline for a household of one (not
8 residing in Alaska or Hawaii) is \$15,060.00. See U.S. Dpt. Health & Human Service
9 (available at <https://aspe.hhs.gov/poverty-guidelines>).

10 Here, Plaintiff has made the required showing under 28 U.S.C. § 1915(a). (ECF
11 No. 2.) However, the Court will recommend Plaintiff’s IFP application be denied because
12 the action is facially frivolous and without merit because it fails to state a claim and lacks
13 subject matter jurisdiction. “A district court may deny leave to proceed in forma pauperis
14 at the outset if it appears from the face of the proposed complaint that the action is
15 frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998)
16 (quoting *Tripathi v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also
17 *McGee v. Dep’t of Child Support Servs.*, 584 Fed. App’x. 638 (9th Cir. 2014) (“the district
18 court did not abuse its discretion by denying McGee’s request to proceed IFP because it
19 appears from the face of the amended complaint that McGee’s action is frivolous or
20 without merit”); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
21 District Court to examine any application for leave to proceed in forma pauperis to
22 determine whether the proposed proceeding has merit and if it appears that the
23 proceeding is without merit, the court is bound to deny a motion seeking leave to
24 proceed in forma pauperis.”). Because it appears from the face of the Complaint that this
25 action is frivolous and is without merit as discussed in more detail below, the Court
26 recommends denying Plaintiff’s IFP motion.

27 II. SCREENING REQUIREMENT

28 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis

1 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to
2 state a claim on which relief may be granted,” or “seeks monetary relief against a
3 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*,
4 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an
5 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In
6 reviewing a complaint under this standard, the court accepts as true the factual
7 allegations contained in the complaint, unless they are clearly baseless or fanciful, and
8 construes those allegations in the light most favorable to the plaintiff. See *Neitzke*, 490
9 U.S. at 327; *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960
10 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

11 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627
12 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*).
13 However, the court need not accept as true conclusory allegations, unreasonable
14 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d
15 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does
16 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007);
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

18 To state a claim on which relief may be granted, the plaintiff must allege enough
19 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A
20 claim has facial plausibility when the plaintiff pleads factual content that allows the court
21 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
22 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the
23 complaint and an opportunity to amend unless the complaint’s deficiencies could not be
24 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 80
25 F.3d 336, 339 (9th Cir. 1996).

26 **III. THE COMPLAINT**

27 Plaintiff brings this action against Defendants State of California and Sacramento
28 District Attorney’s Office. Compl. at 1, 3 (ECF No. 1). Plaintiff states the basis for

jurisdiction is federal question based on the following federal statutes: 18 U.S.C. § 242 for deprivation of rights; 18 U.S.C. Ch. 73 for obstruction of justice;² and 18 U.S.C. § 2332h for radiological dispersal device. *Id.* at 2, 5. Plaintiff further alleges “criminal allegations against” Defendants pursuant to the following additional statutes: 18 U.S.C. § 1117 for conspiracy to commit murder; 18 U.S.C. §§ 1343 and 1341 for mail and wire fraud; “conspiracy to defraud the public and commit insurance fraud”; 18 U.S.C. §§ 1505, 1507, and 1519 for obstruction of justice; California Civil Procedure §§ 377.60 and 377.62 for wrongful death;³ and 18 U.S.C. § 182. Compl. at 8. Plaintiff alleges that from August 29, 2017 to January 15, 2025, he has been “subjected to police brutality and obstruction of justice, including but not limited to suppression of evidence, wrongful denial of Plaintiff’s claims and intentional misconduct by law enforcement and prosecuting authorities.” *Id.* at 8. Plaintiff seeks \$60 million in damages and “demands the initiation of criminal proceedings against the individuals [for] conspiracy, fraud and attempted murder.” *Id.* at 8, 9.

IV. DISCUSSION

A. Subject Matter Jurisdiction

The Court lacks subject matter jurisdiction over this action. Federal courts are courts of limited jurisdiction and may hear only those cases authorized by federal law. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Jurisdiction is a threshold inquiry, and “[f]ederal courts are presumed to lack jurisdiction, ‘unless the contrary appears affirmatively from the record.’” *Casey v. Lewis*, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)); see *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380

² Plaintiff erroneously states a claim for obstruction of justice under 18 U.S.C. § 73. See Compl. at 2, 5. No such federal statute exists. Obstruction of justice is covered in a variety of federal statutes within 18 U.S.C. Ch. 73, including 18 U.S.C. §§ 1505, 1507, and 1519.

³ Plaintiff erroneously lists the statute for wrongful death under 18 U.S.C. §§ 377.60 and 377.62. See Compl. at 8. No such federal statute exists. California Civil Procedure Code §§ 377.60 and 377.62 governs wrongful death claims.

1 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the merits of a case
2 or order any relief and must dismiss the case. See *Morongo*, 858 F.2d at 1380. A federal
3 court's jurisdiction may be established in one of two ways: actions arising under federal
4 law or those between citizens of different states in which the alleged damages exceed
5 \$75,000. 28 U.S.C. §§ 1331, 1332. "Subject-matter jurisdiction can never be waived or
6 forfeited," and "courts are obligated to consider *sua sponte*" subject matter jurisdiction
7 even when not raised by the parties. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012).

8 The Complaint fails to establish the Court's subject matter jurisdiction. See
9 Compl. The Complaint states no basis for federal court jurisdiction, and none is
10 apparent. Although the Complaint indicates the basis for subject matter jurisdiction is
11 federal question, the federal criminal provisions cited in Plaintiff's Complaint do not give
12 rise to civil liability or provide a private right of action. See *Manter v. Fresno Police Dep't*,
13 2019 WL 5172176, at *4 (E.D. Cal. Oct. 15, 2019) (holding plaintiff, as a private citizen,
14 lacks standing to enforce any violation under 18 U.S.C. Ch. 73); *Allen v. Gold Country*
15 *Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (affirming claims brought under 18 U.S.C.
16 § 242 do not give rise to civil liability because it is a criminal statute); *Harris v. Kern Cnty.*
17 *Sheriffs*, 2019 WL 1777976, at *8 (E.D. Cal. Apr. 23, 2019) (holding plaintiff is unable to
18 state a private cause of action under 18 U.S.C. § 1117); *McDonald v. Lee*, 2015 WL
19 4758012, at *3 (E.D. Cal. Aug. 11, 2015) (holding private citizens do not have standing
20 to prosecute federal claims, including claims brought under 18 U.S.C. §§ 1341 and
21 1434, and are therefore subject to dismissal.); *Igorova v. Tsaricati*, 2019 WL 4879156,
22 at *3 (E.D. Cal. Oct. 3, 2019) (holding 18 U.S.C. § 371 provides "no basis for civil
23 liability") (citing *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980)); 18 U.S.C.
24 § 2332h (providing criminal penalties for violations under 18 U.S.C. § 2332h). Finally, in
25 light of the recommendation to dismiss Plaintiff's federal claims, the Court recommends
26 declining to exercise supplemental jurisdiction over the remaining state law claim alleged
27 under California Civil Procedure §§ 377.60 and 377.62 for wrongful death. A court may
28 decline to exercise supplemental jurisdiction over state law claims if it "has dismissed all

1 claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). In addition, the
2 Supreme Court has stated that if “the federal claims are dismissed before trial...the state
3 claims should be dismissed as well.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 726
4 (1966).

5 The Complaint also fails to establish diversity jurisdiction. Although Plaintiff
6 satisfies the amount in controversy requirement by stating he seeks \$60 million in relief,
7 Plaintiff fails to establish diversity of citizenship. See Compl. at 8. On the face of the
8 Complaint, all parties appear to be citizens of California. Compl. at 3 (naming
9 Defendants Sacramento District Attorney’s Office and State of California, and stating
10 Plaintiff is located in Sacramento, California); see also *Morris v. Princess Cruises,*
11 *Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (“Section 1332 requires complete diversity of
12 citizenship; each of the plaintiffs must be a citizen of a different state than each of the
13 defendants.”). Because there is no diversity of citizenship established here, the Court
14 finds that it also lacks subject matter jurisdiction based on diversity jurisdiction.

15 **B. Federal Rule of Civil Procedure 8**

16 Plaintiff’s Complaint does not contain a short and plain statement of a claim as
17 required by Federal Rule of Civil Procedure 8. In order to give fair notice of the claims
18 and the grounds on which they rest, a plaintiff must allege with at least some degree of
19 particularity overt acts by specific defendants which support the claims. See *Kimes v.*
20 *Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). Here, the Complaint does not contain facts
21 supporting any cognizable legal claim against Defendants. The Complaint consists of a
22 few vague and conclusory allegations that fail to establish Plaintiff’s causes of action. In
23 addition, Plaintiff lists criminal federal statutes that do not provide for civil liability or a
24 private right of action. Although the Federal Rules adopt a flexible pleading policy, even
25 a pro se litigant’s complaint must give fair notice and state the elements of a claim plainly
26 and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).

27 The Complaint is subject to dismissal. See *McHenry v. Renne*, 84 F.3d 1172,
28 1178-80 (9th Cir. 1996) (affirming dismissal of complaint where “one cannot determine

from the complaint who is being sued, for what relief, and on what theory, with enough detail to guide discovery”).

C. Leave to Amend

In considering whether leave to amend should be granted, the Court finds that the Complaint is without merit because it fails to state a claim and lacks subject matter jurisdiction. *See generally* Compl. In light of the Complaint’s deficiencies and the Court’s lack of subject matter jurisdiction, granting leave to amend would be futile. The Complaint should therefore be dismissed without leave to amend. *See Lopez*, 203 F.3d at 1130-31; *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

V. CONCLUSION


Based upon the findings above, it is RECOMMENDED that:

1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) be DENIED;
2. Plaintiff’s Complaint (ECF No. 1) be DISMISSED without leave to amend;
- and
3. The Clerk of the Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court and serve a copy on all parties. This document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served on all parties and filed with the Court within 14 days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: May 27, 2025

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CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE